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THE PRESIDENT'S SCHEDULE

Friday - September 9, 1977

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8:15 Dr. Zbigniew Brzezinski - The Oval Office.

9:00 His Excellency Lt. General Jorge Rafael Videla,  
(30 min.) President of the Republic of Argentina.  
(Dr. Zbigniew Brzezinski) - The Oval Office  
and the Cabinet Room.

10:15 His Excellency Dr. Aparicio Mendez Manfredini,  
(30 min.) President of the Oriental Republic of Uruguay.  
(Dr. Zbigniew Brzezinski) - The Oval Office  
and the Cabinet Room.

11:00 Mr. Jody Powell - The Oval Office.

11:15 Vice President Walter F. Mondale, Admiral  
Stansfield Turner, and Dr. Zbigniew Brzezinski.  
The Oval Office.

12:00 Lunch with Mr. Bill Lynch and Ms. Anne Russell.  
The Oval Office.

1:30 The Right Honorable Sir Eric M. Gairy, Prime  
(30 min.) Minister of the State of Grenada. (Dr. Zbigniew  
Brzezinski) - The Oval Office and the  
Cabinet Room.

2:45 The Right Honorable Lynden O. Pindling, Prime  
(30 min.) Minister of The Commonwealth of The Bahamas.  
(Dr. Zbigniew Brzezinski) - The Oval Office  
and the Cabinet Room.

3:45 His Excellency Daniel Oduber Quiros, President  
(30 min.) of the Republic of Costa Rica. (Dr. Zbigniew  
Brzezinski) - The Oval Office and the Cabinet  
Room.

THE WHITE HOUSE  
WASHINGTON

/	FOR STAFFING
	FOR INFORMATION
	FROM PRESIDENT'S OUTBOX
	LOG IN/TO PRESIDENT TODAY
	IMMEDIATE TURNAROUND

ACTION	FYI	
	/	MONDALE
		COSTANZA
		EIZENSTAT
		JORDAN
		LIPSHUTZ
	/	MOORE
		POWELL
/		WATSON
/		LANCE
/		SCHULTZE

	ENROLLED BILL
	AGENCY REPORT
	CAB DECISION
	EXECUTIVE ORDER
	Comments due to
	Carp/Huron within
	48 hours; due to
	Staff Secretary
	next day

	ARAGON
/	BOURNE
/	BRZEZINSKI
	BUTLER
	CARP
	H. CARTER
	CLOUGH
/	FALLOWS
	FIRST LADY
	HARDEN
	HUTCHESON
	JAGODA
	KING

	KRAFT
	LINDER
	MITCHELL
	MOE
	PETERSON
	PETTIGREW
	POSTON
	PRESS
	SCHLESINGER
	SCHNEIDERS
/	STRAUSS
	VOORDE
	WARREN



THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE  
WASHINGTON, D. C. 20201

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There are few, if any, more persistent, significant or intractable problems that will touch you as President at home than the problems of race in America. There may be no more significant signal you will send on this subject than the BAKKE matter you eventually approve.

It is a problem that deserves more of all our time and I hope you will give me an opportunity to meet with you before final decisions are made.

Joe Califano



THE PRESIDENT HAS SEEN.

THE WHITE HOUSE

WASHINGTON

September 9, 1977

MEMORANDUM FOR THE PRESIDENT

FROM: STU EIZENSTAT *Stu*

SUBJECT: The Bakke Case

Attached are memos from Secretary Califano and Eleanor Holmes Norton. Also attached is a rough draft of a working outline which resulted from our meeting with the Vice President and Judge Bell today. I believe that Judge Bell will attempt to convince Judge McCree that we should follow the outline set out in this two-page summary, which I drafted.

**Electrostatic Copy Made  
for Preservation Purposes**

THE WHITE HOUSE  
WASHINGTON

MR. PRESIDENT-

REGARDING BAKKE CASE, I  
SUGGESTED FOLLOWING STRATEGY:

- 1) DUE TO LEAKS, EXPECTATIONS AMONG  
BLACKS AND LIBERALS IS VERY LOW
- 2) CONSEQUENTLY, IT IS OUR PLAN TO  
LEAK OVER THE WEEKEND OUR ~~REAL~~ INTENTION  
TO COME OUT IN FAVOR OF  
REVERSING BROWN VS. BD. OF  
EDUCATION (HISTORIC SEGREGATION SUIT)
- 3) MONDAY, WE WILL COME <sup>OUT</sup> STRONGLY  
IN FAVOR OF BAKKE AND  
EVERYONE WILL BE RELIEVED.

N.J.





1. The Administration strongly supports and encourages affirmative action programs to help bring disadvantaged minorities into the mainstream of American life in jobs, educational institutions and all walks of life.
2. The Administration objects to rigid, inflexible racial quotas which have the effect of barring people who may be similarly disadvantaged to racial minorities from participation in certain programs simply because of their race.
3. In this case the Administration's review of the record indicates that the facts are inadequate to determine whether or not in the administration of the Special Admissions Program, the University of California properly implemented its own laudible program for persons from "economic and educationally disadvantaged backgrounds" in such a way that persons were excluded from competing for positions in this Special Admissions Program solely because of their non-minority group status.
4. Because of the overriding importance of the issues presented by this case, the Administration feels compelled to set out its position favoring affirmative action and opposes rigid racial quotas as set out above, but feels that the United States Supreme Court should not pass judgment on the merits of Bakke's individual case due to the inadequacies of the record. Therefore the Administration asks the Court to dismiss the writ of certiorari as improvidently granted, given the record before the Supreme Court.



5. Alternatively, because the United States Government is not a party to this suit and because it was not a part of the trial or appellate process in this case, the facts are not sufficiently clear for the United States Government to determine whether the administration of this case was properly consonant with principles of affirmative action or was an illegal racial quota.

Secretary Califano  
Memo



THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE  
WASHINGTON, D. C. 20201

September 9, 1977

Mr. President —

I believe you will make the most serious mistake of your Administration in domestic policy to date if you permit the Justice Dept. to file the BAXNE brief in the form I read it and under present circumstances.

There is no need to file a brief next week. There is a searing need to think through the legal, social policy and political (in the broadest sense) implications of this document.

The brief writing process (indeed the whole consultation process) has been so closely held -- dominated through this past week by two holdover lawyers in the S. E.'s office -- that even I, with a Dept. as deeply involved





THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE  
WASHINGTON, D. C. 20201

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As any in the gov't., with a legal background, with a Presidential press statement that I would be involved, first got wind of the brief's existence in a N.Y. Times article over Labor Day weekend.

The brief I have read proposes new, uncharted law in your Administration's name - and distinctly pernicious social policy. Rec-  
scription programs are not "presumptively unconstitutional" as that brief asserts.

One cannot responsibly judge the Baer facts in their present state of ambiguity - and the U.S. government (your Administration) need not take such a reckless and unnecessary step.

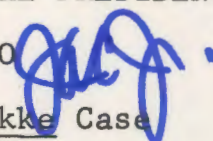


THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE  
WASHINGTON, D. C. 20201

September 9, 1977

CONFIDENTIAL

MEMORANDUM FOR THE PRESIDENT

FROM JOE CALIFANO 

SUBJECT: The Bakke Case

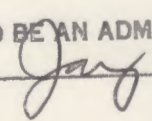
The draft Justice Department brief in the Bakke case is bad law, and pernicious social policy.

I. The Law

The Bakke case is not a situation in which the U. S. Government should be arguing about whether the particular (quite confused) facts presented to the Supreme Court constitute improper quotas or legitimate affirmative action goals. We should draw the distinction in general as clearly as we can (and as I tried to do in my CCNY speech on June 5th), but, because of the poor record in the case, we should not characterize what the University of California did as either one or the other.

The issue of interest to the U. S. Government and to this Administration is the standard by which attempts to increase and enrich minority enrollment in professional schools and higher education should be judged.

There are literally more than 100 such programs -- many involving a long-standing role for the U. S. Government -- to deal with the appalling absence of minorities (particularly blacks, but also Native Americans and Chicanos) in higher education. Despite the fact that blacks constitute nearly 12% of the population at large, they constitute only one or two percent of the doctors and lawyers. And, you can hardly find any minorities in the important professions of this post-industrial society -- professions like

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banking, physics, nuclear technology, computer technology, biomedical science, pharmaceutical science, etc.

Against that background, and against a 200 year history -- in which blacks were slaves during the first half and suffered from persistent and systematic discrimination during the second -- the question for the U.S. Government is: What is the Constitutional standard by which attempts to increase black and other minority participation in higher education should be judged? That standard, in my judgment, clearly should be whether or not a particular affirmative action program has a rational basis. To say that such programs should be judged "presumptively unconstitutional" or subject to a "compelling needs test," which the Justice Department brief seeks to do, is, in my view, bad law.

This nation, over the past 25 years -- and largely during the 1960's -- has put in place a host of programs in other areas designed to deal constitutionally with the problem of racism: minority set aside procurement programs, the 10% set aside for minorities in the CETA programs, the developing college funds (\$110 million this year) to support black colleges, etc.

Only this week you promised to do something specifically directed at the shameful unemployment rate -- now exceeding 40% in some urban areas -- for black teenagers. Is your action "presumptively unconstitutional"? Is that the standard by which Federal action on unemployment should be judged? The virtual absence of blacks in the higher education community is at least as serious to our nation as black unemployment.

In sum, the draft brief prepared by the Department of Justice in the Bakke case:



- Recommends an inappropriate, overly strict standard by which the Courts should judge the constitutionality of race sensitive special admissions programs -- a standard which makes all such programs presumptively unconstitutional and which will call into question the legality of vast numbers of affirmative action programs aimed at redressing the wrongs of pervasive, systemic and historic racial discrimination.
- Urges the Supreme Court to go forward under the improper standard of review and to decide that the University of California special admissions program is unconstitutional, although the brief acknowledges that the factual record in the Bakke case is, in many respects, thoroughly inadequate. In so doing, the brief improperly (1) blurs the distinction between goals and quotas, (2) comments -- directly and by implication -- on a number of constitutional questions best addressed on a far better factual record, and (3) in the process creates substantial doubt and confusion about what constitutes valid affirmative action programs, not just in higher education but in other areas as well.

As drafted, therefore, the brief will be widely -- and correctly -- interpreted as a significant retreat from the principle that affirmative action is necessary to counteract tragic effects of wide-spread and long-standing discrimination against minorities -- especially against black Americans.

A. The Standard of Judicial Review

Although questions about standards of judicial review have a dry, lawyerly ring about them, they are of enormous importance because such standards provide the basic perspective from which Federal and State courts determine the constitutionality of affirmative

action programs. And the question has special importance in this case because the Supreme Court has not yet announced the appropriate standard of judicial review for race sensitive special admissions programs in higher education.

(1) The Two Tests. The Equal Protection Clause of the 14th Amendment -- upon which Bakke rests his case -- provides that "No State. . . shall deny to any person within its jurisdiction the equal protection of the laws." Traditionally, the Supreme Court has applied one of two standards in assessing claimed Equal Protection violations.

- The Rational Relation Test. The Court determines whether the purpose of the challenged state action is constitutionally permissible and then assesses whether there is a rational relationship between that purpose and the means the State has chosen to give the purpose effect. In practice, this test gives deference to the State's democratic processes and allows State authorities considerable latitude in fashioning appropriate means to implement legitimate purposes.
- The Strict Scrutiny Test. In certain sharply defined areas, the Supreme Court has applied a much stricter test to State actions challenged under the Equal Protection Clause. This is known as the strict scrutiny or compelling state interest test and has traditionally been used when State action discriminates against racial minorities or uses racial classifications to stigmatize racial groups. State action subjected to the strict scrutiny test almost never passes constitutional muster, and the invocation of the test is widely viewed as sounding the death knell for the particular State action challenged by constitutional litigation.



(2) The Basic Issue. The fundamental question posed by Bakke is whether, for purposes of choosing the appropriate Equal Protection standard of judicial review, there is a difference between State action that discriminates against racial minorities in an "invidious" (i.e., harmful fashion) and State action that uses race sensitive criteria as one means to effect the purpose of remedying the past effects of invidious discrimination.

- The Supreme Court of California ruled that the beneficial racial classifications utilized by the Davis Medical School to achieve an integrated student body were no different than the invidious racial classifications historically used to discriminate against racial minorities. It subjected such beneficial classifications to the strict scrutiny test. And, applying that test, the California Supreme Court further ruled that the Davis Medical School was enjoined from considering the race of any applicant in passing upon Bakke's application for admission. This ruling has the effect of absolutely prohibiting race sensitive special admissions programs.
- The draft brief also rejects any distinction between "invidious" racial classification aimed at subjugating and stigmatizing racial minorities and beneficial classifications aimed at countering the effects of pervasive, systemic and historic racial discrimination. And the brief also adopts the strict scrutiny test. Although it then attempts to be less absolute than the California Supreme Court and to show (in a very confusing and contradictory way) that certain race sensitive special admissions programs could be constitutional, the adoption of the strict scrutiny test



is a serious mistake. If the strict scrutiny test applies, then all race sensitive special admissions programs -- and quite possibly all affirmative action programs that explicitly take race into account -- will be presumptively unconstitutional. That is simply an intolerable position for this Administration to take.

(3) An Alternative Approach: Use of the Rational Test. I believe that, under the Constitution, there are significant differences between racial classifications that subjugate and stigmatize racial minorities -- and which should trigger the strict scrutiny standard of judicial review -- and racial classifications which are clearly remedial, which use race as an important factor in attempting to rectify the enormous historic injury caused by racial discrimination, and which should only trigger a "rational relation" standard of review.

In my judgment, the distinction between the types of racial classifications (invidious v. beneficial) can be vigorously defended on principled, constitutional grounds. The essential point is that the factors which led the Supreme Court to rule that invidious racial purposes or classifications are subject to a strict scrutiny test (and are, therefore, unconstitutional in virtually all cases) do not apply to race sensitive special admissions programs:

- Racial classifications aimed at integrating higher education are not "invidious classifications" because they are not intended to -- nor do they -- exclude any particular racial group from participation in higher education;
- Such classifications do not stigmatize any racial group as inferior but rather recognize the effects of several centuries of discrimination -- discrimination that until quite recently was either part of the express structure of law or condoned by law;
- Such classifications -- aimed at furthering the fundamental national policy of integration -- are not the instruments by which majoritarian racial prejudice has imposed unequal treatment on a powerless (or relatively powerless) racial minority;
- Such race sensitive classifications, as even the draft brief recognizes, have been approved by the Supreme Court in a number of other contexts, without being considered "invidious" or "suspect" (school desegregation, voting rights, employment, access to federally funded programs); and,
- Such classifications are fully justified by the history and central purpose of the 14th Amendment, which was, of course, enacted to protect black citizens from discriminatory State action following the Civil War.



I strongly urge that the draft brief's position on the appropriate standard of judicial review be reconsidered and a rational relation test be advocated before the Supreme Court.\*

Application of the rational basis test will allow courts to look at the purposes of special admissions programs to determine if they are constitutionally permissible and not invidious. For example, even under the rational test, the Supreme Court could rule that affirmative action programs aimed at increasing minority enrollment can only be constitutional if they accept qualified minority students. Similarly, under the rational relation test, the Supreme Court could strike down any program which imposed a strict quota system that simply filled up a certain number of places in a class without regard to the qualifications of minority students.

But adoption of the rational relation test in the brief will also indicate to the nation that race sensitive special admissions programs are presumptively constitutional, not presumptively unconstitutional. It will recognize as the

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\* The absurdity of applying a strict scrutiny standard to race sensitive special admissions policies is illuminated by the policy of the Davis Medical School to give special preference to qualified applicants from Northern California, a traditionally underserved area in the State. If Bakke had challenged that admissions policy, the traditional rational relation test would apply under well settled constitutional law. Even if it could have been shown that but for that region-sensitive special admissions policy Bakke would have been admitted to medical school, his legal challenge would have failed under the rational relation test. The school would have simply shown that it is a permissible goal to increase the probability that Northern California will be served (by admitting students from that area) and that the special admissions policy is rationally related to that end.

It is indeed strange that the school's desire to train minority physicians so that they might serve in underserved communities is not given equal deference. And it is hard to understand why the transcendent national policy of integration to counteract the effects of past discrimination should be subjected to greater constitutional scrutiny than the region-sensitive special admissions policy.



basic policy of the United States that, at least for a period of time, remedial action will be required -- indeed encouraged -- to rectify the deep-rooted effects of slavery and racial discrimination. And it will give appropriate deference to educational institutions, allowing them to set educational goals, policy and admissions standards.

(4) Impact on Governmental Programs. Appendix A describes the impact on existing affirmative action programs of a brief in Bakke advocating a strict scrutiny test to the Supreme Court. The conclusion is that this impact will be profound.

Even if the Supreme Court does not adopt the position advocated in the draft brief, the brief will be read as a statement of the Administration's civil rights policy. And since the strict scrutiny test views race sensitive affirmative action programs as presumptively unconstitutional, this will constitute a serious reversal of policy.

Moreover, if the Supreme Court were to adopt the brief's position, then the Bakke decision would spawn innumerable lawsuits challenging affirmative action programs. Not only would such challenges have a substantially increased chance of success as a result of the Supreme Court's ruling, but the mere fact of substantially increased litigation against the government's affirmative action programs would tie up a very high percentage of HEW's civil rights resources in defensive law suits rather than in constructive actions carrying out the vital tasks assigned to the Department by Congress.

B. Applying the Proper Standard of Review to the Facts of This Problem

There is general agreement within the Justice Department and the White House that the Bakke case was badly litigated below and that the record in the case is in many important respects inadequate.

The U.S. Government should not have to fight the battle of affirmative action again on someone else's turf. As I have gotten more deeply into the record of the case, I have decided it is reckless -- that is the most temperate word for it -- for the Administration to render a judgment on the particular facts of this case.

Nonetheless, the draft brief recommends that the Supreme Court affirm the California Supreme Court's ruling requiring the admission of Bakke. In so doing, the brief necessarily tries to analyze the constitutional merits and defects of Davis' race sensitive special admissions program, and, because the record is so poor, it creates substantial confusion about whether other race sensitive special admissions programs are valid.

I strongly believe that the proper course for the U. S. Government is to avoid taking a position on whether Bakke should be admitted and whether the particular special admissions program is valid.

The brief can take a responsible position by urging that the Supreme Court reverse the California court on the question of the appropriate standard of judicial review for race sensitive special admissions programs, and it can point to the failings of the record in urging that the State court's ruling about Bakke's admission be vacated and reconsidered by the State court in light of that standard.

This approach would be most appropriate for the U. S. Government as amicus curiae. Our role is to provide views on broad national policy, and this suggested approach comports fully with that role.



An incidental value of this approach is that it will avoid getting involved in the war of symbols that surrounds whether Bakke personally wins (gains entrance) or loses (is denied entrance).

Let me briefly explain this approach in a bit more detail.

(1) Principles of Affirmative Action

Rather than attempting to make a recommendation about the particular dispute between Bakke and the University of California, the brief could instead set out certain principles that should be part of any constitutionally valid race sensitive special admissions program. These principles could include the following:

- Race sensitive special admissions programs are necessary to remedy the pernicious past effects of racial discrimination.
- Race sensitive special admissions programs should be undertaken voluntarily by educational institutions even when that particular institution has not been found guilty of past racial discrimination.
- Race sensitive special admissions programs must only admit qualified minority applicants, but such programs can recognize that, because of the effects of racial discrimination, institutions can define "qualifications" more sensitively than the mere measurement of objective test scores and grade point averages and can take race into account in setting such qualifications.
- Race sensitive special admissions programs will not always be necessary, but they are necessary today.



- Race sensitive special admissions programs cannot impose quotas -- which are rigid formulas that attempt to ensure admission of a certain number of applicants to an entering class purely on the basis of race and without regard to qualification.
- Race sensitive special admissions programs can establish numerical goals or targets for minority applicants, provided that those goals or targets are only met by enrolling qualified applicants and such targets function as neither a floor nor a ceiling.
- There must be a rational basis for choosing a particular number. A rational basis for a particular numerical target could be the proportion of minority college graduates compared to the total college graduate pool, or the proportion of minority applicants in the total pool of applicants to the school.

(2) Deficiencies in the Record. After setting forth appropriate principles for affirmative action, the brief could then demonstrate the deficiencies in the record of the case.

- It is unclear whether the 16 places set aside by the University of California for special admittees operated as a quota or as a numerical target, as those terms are defined above.
- It is unclear whether there was any rational basis for the University's choice of the number 16.
- It is unclear whether the special admissions program was for disadvantaged students generally or disadvantaged minority students alone.
- It is unclear whether the regular admissions committee made a general judgment about the qualifications of the total class or whether the special admissions committee's judgment and view of qualifications were ever reviewed by the regular admissions committee.
- It is unclear whether the so-called "benchmark" scores, based on evaluations of a number of factors, are the final determinant of an applicant's qualifications for enrollment.

As noted, the brief could then argue that given these uncertainties, the Court should not engage in speculation about their resolution. Rather it should reverse the California Supreme Court on the question of judicial standards and vacate the portion of the ruling relating to Bakke personally for reconsideration in light of the standard announced.



## II. Pernicious Social Policy

The most serious problem this nation continues to face is racism. Despite the herculean efforts of Earl Warren, John Kennedy, Lyndon Johnson and others in the 1950's and 1960's, this problem still plagues our society. It pervades every aspect of social activity: unemployment, education, health, housing, urban crime, rural poverty.

But the statistics are worse in the arena of higher education and professional education than in any other aspect of black-white social or economic activity. Some of the best universities in our nation -- the University of California is one, but Harvard, Yale, Princeton, Michigan, Chicago are others -- are trying to deal with this problem by a variety of programs directed at increasing participation by minorities in their educational systems where those minorities are capable of passing courses required, even though those minorities do not always have the paper credentials of their white counterparts. Those universities have basically said: We reject as inherently unfair the Catch 22 notion of judging people on the basis of credentials we deny them.

The Justice Department brief would put in motion just such a Catch 22 system because it would require that blacks and whites ultimately be judged by "racially-neutral" criteria. There is simply no way -- for at least a decade and possibly a generation -- to give minorities an opportunity at the universities of this country if we adopt that posture.

The effective retreat from affirmative action urged in this draft brief is, as a matter of national policy, a profound mistake. The quest for racial equality has been, and continues to be, a major -- if not the major -- domestic issue. There is a broad national consensus that such integration can only occur, at present (although not indefinitely), if educational institutions can use race sensitive special admissions programs to increase the number of minority students. It is imperative that this nation make sure that higher education is accessible to disadvantaged minorities so that far more of tomorrow's leaders can be drawn from minority groups.

Such a retreat is also, as a matter of Administration policy, a profound mistake. It will call into question your commitment to racial equality. It will be greeted with hostility in minority communities. It will be viewed as an



improper intrusion into the traditional autonomy of educational institutions to establish policies that are consistent with basic national goals. And it will invite numerous legal challenges to a number of government affirmative action programs that the Administration supports.

These problems are magnified because the Bakke case has received so much publicity and is so widely viewed as a test of this nation's will to complete the unfinished business of erasing the stain of racial discrimination. In many discussions with educators, members of minority communities and other citizens, I have been deeply impressed by their view that a position adverse to affirmative action programs -- like the position taken in the draft brief -- will have a devastating impact on racial progress in the United States.

### III. Next Steps

My recommended course of action is, therefore:

- To adopt a rational relation standard of judicial review for race sensitive special admissions programs;
- To re-emphasize this Administration's commitment to affirmative action programs that seek to remedy the wrongs inflicted by our history of racial discrimination;
- To set forth principles that should guide affirmative action admissions programs within constitutional limits, including the crucial distinction between establishing quotas and setting numerical targets.

It is, of course difficult, at this late hour, for you to get deeply involved in the Bakke brief even though the case presents issues of manifestly Presidential importance.

One way to proceed at this point would be to convene immediately a meeting of representatives from the Justice Department, Bob Lipshutz's office, Stu Eizenstat's staff and HEW to see if there is any possibility of compromise or revision. Alternatively, you may want to hear the divergent views yourself.

In conclusion, I must re-emphasize my deep personal belief that the brief in the Bakke case will constitute one of the most important statements of your Administration. Its impact on racial equality in this nation will be profound, however it is written. It is imperative that the brief advance, not retard, progress towards a truly multi-racial society. Unfortunately, as presently drafted, the brief does not meet this obligation.

#### Appendix



## APPENDIX A

### A Ruling that Race Sensitive Special Admissions Programs are Presumptively Unconstitutional Will Have a Profound Impact on Government Required and Privately Adopted Affirmative Action Programs

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If the brief of the United States takes the position that race sensitive special admissions programs are subject to strict judicial scrutiny and are thus presumptively unconstitutional, the impact will be substantial not only because of the brief's potential influence on the Supreme Court's decision, but because the brief will set forth the administration's civil rights policy in the area of affirmative action. In doing so, it will set the tone of the administration's civil rights policy as a whole.

Given the present approach taken in the draft brief, existing affirmative action programs could be severely curtailed or eliminated and the existing thrust of the government's civil rights enforcement effort intended to correct the long standing problem of discrimination against minorities will be substantially undermined. In addition, many voluntary private affirmative action programs, such as race sensitive compensatory education programs in operation at all levels of the educational system, will be seriously questioned.

The effect on the government's enforcement effort can be illustrated by examining HEW's involvement with affirmative action programs. HEW programs essentially involve three types of affirmative action devices:

(1) Recipients of Federal financial assistance may voluntarily choose to institute race sensitive affirmative action programs where they believe such steps are necessary to deal with particular conditions. For example, the regulations issued under Title VI of the Civil Rights Act of 1964 provide,

even in the absence of . . . prior discrimination, [by the recipient] a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin. (45 CFR 80.3(b)(6)(ii))



Similar language is found in HEW regulations dealing with sex discrimination under Title IX of the Education Amendments of 1972 (45 CFR 86.3(b)) and the Public Health Services Act (45 CFR 83.3 (b)), and discrimination against handicapped persons under section 504 of the Rehabilitation Act of 1973 (45 CFR 84.6(b)).

Under the position taken in the draft brief, the voluntary effort undertaken by institutions of higher education in the student admissions area would be put in grave doubt. The presumptive unconstitutionality of any racial classifications that were employed would give substantial weight to the complaint of any individual who felt himself to be harmed by the affirmative action program. HEW's Office for Civil Rights (OCR) would then be required to thoroughly investigate the operation of the affirmative action program to insure that it was in compliance with the particularized standards of the draft brief. As a practical matter, institutions of higher education which have voluntarily adopted affirmative action programs would become targets for OCR investigation.

In the past, increases in minority higher education enrollment have come about largely as a result of voluntary affirmative action efforts by institutions of higher education with a minimum of government intervention in education policy. The position set forth in the draft brief would have the effect of discouraging these efforts, with a corresponding reduction in the progress of minority access to higher education, and an increase in federal intervention in higher education policy.

Conceivably, the position expressed in the draft brief could also call into question the affirmative action plan requirements of Executive Order 11246 which employ racial criteria. HEW enforces the Executive Order under a delegation of authority from the Department of Labor with respect to certain recipients of Federal contracts. Of course, the impact on HEW in this area would be repeated throughout the Federal government.

Executive Order 11246 requires that government contractors, without regard to past discrimination, establish affirmative action plans designed to ensure

that minorities and women are fairly represented in their work forces. These plans are reviewed by OCR pursuant to Department of Labor standards which require the delineation of specific race sensitive techniques to meet the commitments required by the Executive Order. All of these will be placed in jeopardy by the Justice Department's draft brief.

(2) A second type of remedial race sensitive action is often ordered by OCR to correct discrimination found to have been practiced by an individual recipient of federal financial assistance. Again, using Title VI as an example, the regulation provides:

In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.  
(45 CFR 80.3(b)(6)(i)).

Similar language can be found in regulations under Title IX (45 CFR 86.3 (a)); Section 504 (45 CFR 84.6); the Public Health Service Act (45 CFR 83.3(a) and 83.10(b)); and Executive Order 11246. Also, under the Emergency School Aid Act, the granting of an application for a waiver of ineligibility on account of discrimination against children requires that the discrimination cease "and that the effects of such [discriminatory] practice, policy, or procedure have been remedied or eliminated." (45 CFR 185.44(f)).

The draft brief would also put the legality of all such corrective requirements in serious question. This is particularly ironic since the opinion of the Supreme Court of California does not address the situation where the institution engaging in affirmative action is doing so to correct the effects of discrimination it is specifically found to have committed. The Supreme Court of California rejected a number of federal court cases upholding remedial affirmative action, as being distinguishable from the Bakke case on the grounds that there had been no finding of discrimination on the part of the University.



Nevertheless, under the Department of Justice draft brief, any person perceiving himself to be injured by OCR mandated remedial action could challenge such action on the grounds that such a remedy is presumptively unconstitutional and violates the further constitutional requirement, also advanced in the Justice Department brief, that the quantum of remedial consideration in an individual case may not exceed the quantum of discrimination experienced by the minority individual benefitting from the affirmative action program. Stated differently, the policy expressed in the brief would place such a burden on HEW in establishing the constitutionality of measures it requires to correct past discrimination that, this vital and historically well established tool of civil rights enforcement would be substantially undermined.

It is true that the draft brief purports to defend the constitutionality of goals. However, it is difficult to understand how this position is reconciled with the brief's constitutional theories, and in any event the theories set forth in the brief would undermine any reasonable techniques for accomplishing goals. (Moreover, these theories would raise new barriers to HEW enforcement efforts, and thus reduce the inclination of recipients subject to such efforts to negotiate settlement agreements.) For example:

- Our New York City Title VI agreement requires the Board, by September, 1980, to insure that its minority teachers are within a range representative of the racial and ethnic composition of the available labor pool. In order to reach this goal, the Board has made several commitments which could be challenged under the theory expressed in the draft brief. For example, the Board has agreed that individuals will no longer be ranked on eligible lists in accordance with grades they receive on tests. They have also agreed that all lists will be merged into one, thus creating a single pool of applicants. The Board plans, in order to meet its commitment, to select minorities in disproportionate numbers from the pool. Whites with higher grades than minorities selected would certainly challenge this affirmative action arrangement under the draft brief's theory, and might well prevail.



- In response to the court's order in Adams v. Califano, HEW has issued criteria governing the desegregation of formerly dual systems of education in six southern states. Those criteria include a variety of goals and affirmative action requirements which could be challenged under the position expressed in the draft brief. For example, the criteria require that state officials endeavor to admit blacks to state colleges in the same proportion to the number of black graduates from state high schools as the comparable proportion of whites, and that the current gap between these two rates be closed by 50 percent within 5 years. The criteria also call for employment goals that faculties and administrative staffs of the state university will be representative of the relevant labor pool, and that in the meantime, "the proportion of blacks hired to fill faculty and administrative vacancies shall not be less than the proportion of black individuals with the credentials required for such positions in the relevant labor market area."

Not only would these goals be questionable under the theory of the draft brief, but it is hard to imagine any affirmative action techniques which could be used to meet either of these goals which would be consistent with the theory of the draft brief. The burden of meeting the presumption of unconstitutionality and providing the precisely and individually measured increments of affirmative action called for in the draft brief would be extremely difficult if, indeed, the application of these requirements is possible at all.

It should be noted that several of the states subject to the Adams criteria have made substantial progress in the last few years, and are prepared to make the commitments requested. Each of these states, however, has a sizeable faction who oppose any form of affirmative

action and goals. The position of the brief could seriously jeopardize HEW's enforcement efforts with respect to the criteria.

- Under the Emergency School Aid Act, we require plans to be submitted by applicants who have been found to have discriminated in the hiring of teachers in violation of the statute. Many of these plans require specific race sensitive hiring goals, such as one-for-one hiring. All such approaches will be questionable and certainly subject to challenge, if the view expressed in the draft brief prevails.

(3) HEW has begun to fund programs intended to deal with the significant underrepresentation of minorities and women in certain educational areas which is traceable more to societal discrimination than to discrimination by a particular institution. For example, the National Institute of Education has begun a pilot program using its educational laboratories and research and development centers to increase the participation of minorities and women in educational research.

Other programs administered by HEW provide opportunities for affirmative action. For example, the 1976 Education Amendments' Graduate and Professional Fellowships and Institutional Grants Program requires participation in the fellowship program by groups traditionally underrepresented in colleges and universities. Accordingly, HEW will consider an applicant institution's plan to recruit minority students in allocating a specific number of fellowships to an institution. Similarly, HEW has a program in the Office of Grants Procurement Management called the Division of Minority Business Assistance which encourages the Department to give out contracts to minority businesses. It is derivative of the Small Business Administration's similar program under section 8a of the Small Business Act although it is more explicit than the SBA in being focused on minorities rather than the disadvantaged. The proposed position of the draft brief would significantly hinder such efforts.

Fianlly, it should be pointed out that the position in the draft brief would have the same destructive effect



on affirmative action efforts of other branches of the federal government. Efforts ranging from remedial corrective action ordered by the EEOC or by any federal agency enforcing Executive Order 11246, to minority business assistance given by the SBA, would all be adversely affected. As a result, the entire emphasis of the federal government civil rights enforcement policy would be shifted, and the commitment to rectifying the effects of the country's past history of discrimination on the basis of race, color, national origin and sex would be substantially reduced.

Eleanor Holmes Norton  
Memo





EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
WASHINGTON, D. C. 20506

September 9, 1977

OFFICE OF THE CHAIR

M E M O R A N D U M

TO : President Jimmy Carter

FROM : Eleanor Holmes Norton *EHN*  
Chair, Equal Employment Opportunity Commission

SUBJECT : Government Intervention in the Bakke Case

---

I want you to know of my grave concern over the proposed governmental intervention in the Bakke case to the extent that it will support Mr. Bakke's right of admission to medical school in California. I have not had the opportunity to review the brief, but I spoke at length with the Solicitor General yesterday. I understand that the brief does contain strong support for affirmative action programs, but not for the program of the University of California Medical School, and therefore, the United States will support the decision of the California Supreme Court holding the California medical school special admissions program unconstitutional. The net effect of such a brief filed with the prestige of the federal government behind it will be to discourage what remains of affirmative action programs in higher education and perhaps to jeopardize affirmative action in employment as well. Special admissions programs in particular have been deeply in retreat since the DeFunis case, a law school admissions case very similar to Bakke, in which the federal government did not file. [The Court ultimately rendered no decision, finding the case moot.] The mere bringing of lawsuits has deterred these programs. The entry of the United States for the first time in such a suit on the side of an individual claiming reverse discrimination can only accelerate this deterioration; regardless of what the brief in fact says, it is the entry of the government on the side of a challenger to affirmative action programs that will have the impact. I do not believe this comports with the policy of your administration concerning affirmative action.

Affirmative action programs in higher education began in the late 1960's, during the last Democratic administration. They have produced substantial numbers of black college graduates. Of all blacks, only young college graduates have been able to gain employment substantially on a par with

. . . . . continued



their white counterparts. This is the only sector of American blacks who are operating on a level substantially equivalent to that of the comparable whites; unemployment and low job status continue to plague the teenagers as well as mature black adults. Thus the encouragement of effective affirmative action in higher education should continue to be a high priority for the federal government. It has been the public understanding that you fully support such affirmative action programs.

No matter what language is used in the briefs supporting the general concept of affirmative action it will appear that the government has retrenched. If the government supports the white applicant, it will be viewed by many in education and employment as reason enough to restrict programs of affirmative action to which job opportunities are critically linked today. The government's position will give fuel to those who use the label of "reverse discrimination" to oppose all affirmative action programs. By filing such a brief, we ourselves will be acting, however unwittingly, to set back the national effort to achieve equality. It would be better that the government did not file at all.

But it would be better still for the United States to file a brief which supported the right of individuals and institutions to take voluntary affirmative action to improve the opportunities of minorities and women. Such programs should be supported as lawful by the government unless there is clear and convincing evidence that the program is illegal. The record discloses that even if the special admissions program had not existed, Bakke would not have been admitted because of the large number of white applicants with higher scores who were rejected. It makes no sense for the government to put its own affirmative action efforts in jeopardy for a white applicant who could not have been admitted in any event. (Bakke's relative qualifications were such that he was denied admission to 11 medical schools.)

Recent Supreme Court decisions have made it clear that a person claiming a violation of the 14th Amendment has a heavy burden of proof to show that government action was improper. A review of the record and opinion of the California Supreme Court have satisfied me that the plaintiff did not bear the burden that is now required by the Supreme Court. Therefore, I think it appropriate that the government take the position that the decision of the California Supreme Court should be reversed or, that the case should be returned to California on the technical ground that the Supreme Court should not have agreed to hear it.

In the midst of other weighty concerns before you the certain uproar after such a brief is filed is needless. I do not believe this case is worth marring your own fine record on affirmative action.

EHN/clb

cc :

Jack Watson  
Stuart Eizenstat

Margaret McKenna  
Margaret Mitchell



THE WHITE HOUSE  
WASHINGTON

Personal

9-9-77

was  
delivered  
via messenger

To Bob Bergland

I'm disappointed with  
the way the farm bill  
costs have apparently  
skyrocketed. I'm not able  
to check on USDA figures  
and thought we were approv-  
ing only minimal increases  
above our \$2 billion limit.

Please explain.

Jimmy

THE WHITE HOUSE  
WASHINGTON

September 9, 1977

Tim Kraft  
Jody Powell

The attached was returned in  
the President's outbox. It is  
forwarded to you for appropriate  
handling.

Rick Hutcheson

Re: Invitations from three Major  
Media Groups



THE WHITE HOUSE  
WASHINGTON

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	Comments due to Carp/Huron within 48 hours; due to Staff Secretary next day

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THE WHITE HOUSE  
WASHINGTON

9/2/77

Mr. President:

Tim Kraft's comments:

- #1 - you are scheduled to  
do this
- #2 - concurs
- #3 - advises against even  
tentative acceptances  
so far in advance

---Rick



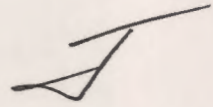
THE PRESIDENT HAS SEEN.

THE WHITE HOUSE

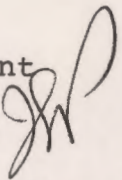
WASHINGTON

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August 12, 1977



MEMORANDUM

TO : The President  
FROM: Jody Powell   
RE : Invitations from three major media groups

1. The Radio-Television News Directors Association meets in mid-September in San Francisco. They asked you to speak. These are the key news-oriented broadcasters from local stations and networks. About 900 will be at the convention.

I recommend you place a telephone call to the convention at a time to be arranged on September 15 (a Thursday) and talk with them for about 20 minutes (brief statement, then some Q&A). A good forum for a Panama treaty pitch.

Yes ☒

No ☐

2. A month later, the National Newspaper Association holds its annual convention in Houston. This group represents all 8,500 weeklies and most of the small dailies. They have asked you to attend and speak. I recommend you give them the same 20-minute telephone talk-plus-Q&A as the Radio-Television News Directors Association. This is another excellent forum to push ratification of the Panama Canal Treaty.

Yes ☒

No ☐

3. I recommend no appearance by you this year before the Associated Press managing editors, but it is important

that we make tentative plans, internally, for you to attend their convention in Atlanta on May 1, 1978. Jack Tarver will be installed as their president at that time.

Additionally, your audience would also include most members of the American Society of Newspaper Editors, who will be meeting at the same time in the same place.

Can we plan along these lines?

Yes \_\_\_\_\_

No ☒ \_\_\_\_\_



THE WHITE HOUSE

WASHINGTON

Date: August 31, 1977

MEMORANDUM

FOR ACTION:

Tim Kraft

FOR INFORMATION:

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: J. Powell memo dated 8/12/77 re Invitations from three  
major media groups

YOUR RESPONSE MUST BE DELIVERED  
TO THE STAFF SECRETARY BY:

TIME: 12:00 NOON

DAY: Friday

DATE: September 2, 1977

ACTION REQUESTED:

☒ Your comments

Other:

STAFF RESPONSE:

☐ I concur.

☐ No comment.

*Please note other comments below:*

**PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.**

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately. (Telephone, 7052)

THE WHITE HOUSE  
WASHINGTON

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Comments due to Carp/Huron within 48 hours; due to Staff Secretary next day	

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Date: August 31, 1977

MEMORANDUM

## FOR ACTION:

Tim Kraft

## FOR INFORMATION:

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: J. Powell memo dated 8/12/77 re Invitations from three major media groups

YOUR RESPONSE MUST BE DELIVERED  
TO THE STAFF SECRETARY BY:

TIME: 12:00 NOON

DAY: Friday

DATE: September 2, 1977

## ACTION REQUESTED:

☒ Your comments

Other:

#1 we are scheduled to do  
#2 I concur with Powell  
recommendation that we do

## STAFF RESPONSE:

☐ I concur.☐ No comment.

Please note other comments below:

#3 - we can't "plan internally" on  
a May '78 date unless the President  
commits to a date that far in advance  
which we haven't done yet - I'd  
advise against even tentative acceptances  
that far in advance -

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately. (Telephone, 7052)

THE WHITE HOUSE  
WASHINGTON

September 9, 1977

Richard Pettigrew

The attached was returned in  
the President's outbox. It is  
forwarded to you for appropriate  
handling.

Rick Hutcheson

cc: The Vice President  
Tim Kraft  
Fran Voorde

RE: SITE OF PROPOSED PRESIDENTIAL  
SPEECH ON REORGANIZATION



THE WHITE HOUSE  
WASHINGTON

*Bill Callahan*  
*Jim Johnson*  
*This*  
*VP's Office*  
*(his unit)*

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THE WHITE HOUSE  
WASHINGTON

9/6/77

Mr. President:

Tim Kraft comments that the date is open.

He adds that there is a question with regard to the number of major speeches you should give in September and October, i.e., Panama Canal, tax reform.

No comment received from Jody.

Rick



THE PRESIDENT HAS SEEN.

THE WHITE HOUSE

WASHINGTON

September 1, 1977

MEMORANDUM FOR:

THE PRESIDENT

FROM:

RICHARD PETTIGREW *Kap*

SUBJECT:

Site of Proposed Presidential  
Speech on Reorganization

At the last Executive Committee meeting you agreed to give a major speech on reorganization. My staff and I are putting together the basic information for a speech incorporating suggestions from Stu Eizenstat, Jack Watson and Harrison Wellford, among others. The information and outline we develop will be submitted to James Fallows, but first, if you like, we will submit the outline to you for additions or deletions.

Jack Watson, Stu Eizenstat, Harrison Wellford and I concur in the recommendation that you make this speech at the Conference on Government Reorganization sponsored by the Woodrow Wilson International Center for Scholars in association with the Center for the Study of Federalism, which is scheduled for September 19 in the "Great Hall" of the Smithsonian Institution.

The two-day conference will focus on intergovernmental aspects of federal reorganization. Among those presenting papers at the conference will be Mayor Kenneth Gibson, former Governor Dan Evans, Congressman John Brademas, Caspar W. Weinberger, and a number of respected academics. Invitees include a number of outstanding national journalists, governors, key leaders of each of the state legislatures, certain Members of Congress, together with outstanding academics. Nonetheless, the audience will be relatively small (200 people). We believe it will be an ideal setting for a serious speech.

In addition to the usual media coverage, we expect public TV or radio to carry the speech in its entirety. Your remarks would be published in the Woodrow Wilson Quarterly which has a distribution of some 80,000, and it would be our intention to

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distribute the text directly to editorial writers throughout the country. The key audience to be reached in the speech will be opinion leaders who can provide generic support for reorganization efforts.

Speech at Smithsonian, September 19

Approve \_\_\_\_\_ Disapprove ☒ \_\_\_\_\_

I wish to review an outline before final remarks are prepared in draft.

Yes \_\_\_\_\_ No ☒ \_\_\_\_\_

*No time now  
J*

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THE WHITE HOUSE

WASHINGTON

Date: September 1, 1977

MEMORANDUM

FOR ACTION:

Jody Powell

Jim Fallows *ok*

Tim Kraft *ok*

FOR INFORMATION:

The Vice President

Stu Eizenstat

Jack Watson

Bert Lance *concur*

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: Pettigrew memo dated 9/1/77 re Site of Proposed Presidential  
Speech on Reorganization

YOUR RESPONSE MUST BE DELIVERED  
TO THE STAFF SECRETARY BY:

TIME: 11:00 NOON

DAY: Saturday

DATE: September 3, 1977

ACTION REQUESTED:

☒ Your comments

Other:

STAFF RESPONSE:

☐ I concur.

☐ No comment.

Please note other comments below:

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately. (Telephone, 7052)

THE WHITE HOUSE  
WASHINGTON

September 9, 1977

Stu Eizenstat

The attached was returned in  
the President's outbox. It is  
forwarded to you for appropriate  
handling.

Rick Hutcheson

RE: ESTABLISHMENT OF AN INTERAGENCY  
WORKING GROUP ON FOOD AND  
AGRICULTURE POLICY



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THE PRESIDENT HAS SEEN:

THE WHITE HOUSE

WASHINGTON

August 30, 1977

MEMORANDUM FOR:

THE PRESIDENT

FROM:

STU EIZENSTAT  
LYNN DAFT *LD*

SUBJECT:

Establishment of an Interagency Working  
Group on Food and Agricultural Policy

*Stu - This -  
I don't like coordinator.  
prefer single coordinator.  
(You, Schultz, etc) with  
Bourne & all others involved  
Sub Committees might be  
formed to contribute  
to one Ag/Food  
analysis  
J.C.*

Secretary Bergland has recommended that you establish an Interagency Working Group to assist in the formulation of food and agricultural policy.

We endorse this recommendation. We think it offers a means of more systematically involving the several agencies that have a stake in the formulation of agricultural policy. Also, we think it can be done in a way that will complement the new decision process now being developed. In addition, it underscores your commitment to Cabinet government.

Peter Bourne raised a concern regarding the role of this working group vis-a-vis Peter's role in developing an Administration initiative on world hunger. We see no problem in that regard. We have talked to Peter and in accord with his concerns, we have modified the proposed memorandum from you to the relevant agencies to make it clear that this working group is not the Administration's vehicle for developing a comprehensive world hunger policy. The Interagency Working Group, as we envision its operation, would concentrate on the more routine agricultural policy issues that are continually arising ... e.g. decisions regarding loan rates, set-asides, import quotas, marketing quotas, and the like. The development of major Administration initiatives, such as the one on world hunger, would normally be handled by other means. It is possible, of course, that this group could be asked to contribute to the development of such an initiative by assessing a part of the overall issue. But we do not see it giving rise to jurisdictional squabbles.

Frank Moore approves the proposal, but suggests that his office be given an opportunity to notify key Congressmen in advance. We think that is a good suggestion.

A proposed memorandum is attached.



# THE WHITE HOUSE

WASHINGTON

## MEMORANDUM FOR THE HEADS OF

### EXECUTIVE DEPARTMENTS AND AGENCIES

This Administration assigns high importance to developing policies and actions in food and agriculture which serve the needs of people, especially poor people, in the United States and abroad. In the United States we must find means for encouraging family farms and efficient agricultural production to assure reasonable incomes to producers and fair prices to consumers. At home and abroad we must work to conquer poverty and hunger. We must expand foreign markets for the United States' efficient agricultural production, and we must help poor nations improve their food production and distribution.

The Secretary of Agriculture has primary responsibility in the Executive Branch for developing policies and actions in food and agriculture. In order to exercise this executive responsibility, the Secretary of Agriculture must weigh and balance interests represented in other parts of the Executive Branch. Accordingly, I am directing the Secretary of Agriculture to form a Working Group on Food and Agricultural Policy. This Working Group will be chaired by the Deputy Secretary of Agriculture and will be composed of representatives at the level of assistant secretary from these organizations:

- Department of State
- Department of the Treasury
- Department of Agriculture
- Office of the Special Representative  
for Trade Negotiations
- Agency for International Development
- Office of Management and Budget
- Council of Economic Advisors
- National Security Council

The Secretary of Agriculture may invite representatives of other organizations in the Executive Branch to serve in the Working Group.



In consultation with the Secretary of Agriculture and the White House Domestic Policy Staff, the Working Group will develop an agenda for policy considerations on domestic and international food and agriculture. The Secretary of Agriculture, in consultation with the Domestic Policy Staff, will inform me of policies adopted and actions taken and will refer to me policy options on issues requiring Presidential decision.

This Working Group will not be the Administration's vehicle for developing a comprehensive world hunger policy, which will be coordinated by other means.

The Department of Agriculture and the Domestic Policy Staff will provide staff for the Working Group on Food and Agricultural Policy.

To ensure coordination, I am asking the Domestic Policy Staff to inform other organizations in the Executive Branch of policy issues to be addressed and decisions made on domestic and international food and agriculture.

X

STAFF COMMENTS



MEMORANDUM

THE WHITE HOUSE

WASHINGTON

INFORMATION

8 September 1977

TO: THE PRESIDENT  
FROM: RICK HUTCHESON *RH*  
SUBJECT: Comments on Eizenstat Memo

OMB concurs with Eizenstat.

STR supports the idea of an interagency mechanism to coordinate the formulation of U.S. agricultural policy, but suggests several amendments to Stu's proposal:

- the working group should be chaired by either CEA or DPS, as a "neutral broker"; otherwise, the group could be dominated by the Cabinet agency with the strongest interest in the subject matter;
- the working group should include Commerce (expertise in agribusiness, pesticides, agricultural equipment) and the CIA (crop forecasting data); both agencies have been valuable members of past agricultural policymaking groups;
- the lines of responsibility for the working group vis-a-vis three statutory committees chaired by STR (Trade Policy Review Group, Policy Committee, and Staff Committee) should be clarified. "This has been done with past interagency agricultural policy working groups with no problem, and I am certain it can be worked out in this case."

Jack Watson fully supports Stu's recommendation that the inter-agency group be reactivated, but thinks that there needs to be a much clearer delineation as to who is working on what -- especially between this group and Peter Bourne's group on world hunger.

Peter Bourne fully supports Stu's suggestion of an interagency working group chaired by USDA, but suggests several amendments:

- the memorandum should make clear that this is a reactivation of a previously existing working group;
- all references to the international aspects of agricultural policy, to policies affecting poor people abroad, etc., should be deleted - to emphasize that the working group would focus primarily on domestic food and agricultural policies.

(DPS does not think it is possible to separate the domestic and international aspects of agriculture, and hence, thinks the references to international agriculture should remain.)

- Peter suggests adding Labor, Commerce and HEW to the working group (issues affecting producers, farm labor, and consumers) and deleting CEA, OMB, NSC and STR from the working group.

(DPS feels strongly that OMB, CEA and STR should be included on the group. While Commerce and Labor were members of the previously existing interagency working group, DPS does not believe they contributed greatly -- they can be called in as necessary. DPS does not see any reason for HEW to be on the working group.)

Jim Fallows has cleared the memorandum.



THE WHITE HOUSE

WASHINGTON

Date: August 31, 1977

MEMORANDUM

FOR ACTION:

Jack Watson *concur by phone attached*  
Bert Lance *concur*  
Charlie Schultze *nc by phone*  
Peter Bourne *attached*  
Zbig Brzezinski Bob Strauss *attached*  
Jim Fallows *attached*

FOR INFORMATION:

The Vice President

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: Eizenstat memo dated 8/30/77 re Establishment of an  
Interagency Working Group on Food and Agriculture  
Policy.

YOUR RESPONSE MUST BE DELIVERED  
TO THE STAFF SECRETARY BY:

TIME: 9:00 AM

DAY: Friday

DATE: September 2, 1977

ACTION REQUESTED:

☒ Your comments

Other:

STAFF RESPONSE:

☐ I concur.

☐ No comment.

Please note other comments below:

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately. (Telephone, 7052)

THE WHITE HOUSE

WASHINGTON

September 1, 1977

MEMORANDUM FOR THE HEADS OF

EXECUTIVE DEPARTMENTS AND AGENCIES

This Administration assigns high importance to developing policies and actions in food and agriculture which serve the needs of people in the United States. In the United States we must find means for encouraging family farms and efficient agricultural production to assure reasonable incomes to producers and fair prices to consumers. We must work to conquer poverty and hunger. We must expand foreign markets for the United States' efficient agricultural production.

The Secretary of Agriculture has primary responsibility in the Executive Branch for developing domestic policies and actions in food and agriculture. In order to exercise this executive responsibility, the Secretary of Agriculture must weigh and balance interests represented in other parts of the Executive Branch. Accordingly, I am directing the Secretary of Agriculture to reactivate the Interagency Working Group on Food and Agricultural Policy. This Working Group will be chaired by the Deputy Secretary of Agriculture and will be composed of representatives at the level of assistant secretary from these organizations:

Department of Agriculture  
Department of State  
Department of Treasury  
Department of Labor  
Department of Commerce  
Department of Health, Education  
and Welfare  
Agency for International Development

The Secretary of Agriculture may invite representatives of other organizations in the Executive Branch to serve in the Working Group.

In consultation with the Secretary of Agriculture and the White House, the Working Group will develop an agenda for policy considerations on domestic food and agriculture. The Secretary of Agriculture, in consultation with the White House will inform me of policies adopted and actions taken and will refer to me policy options on issues requiring Presidential decision.



To ensure coordination, I am asking the Domestic Policy Staff to inform other organizations in the Executive Branch of policy issues to be addressed and decisions made on domestic food and agriculture.

The Department of Agriculture and the Domestic Policy Staff will provide staff for the Working Group on Food and Agricultural Policy.

This Working Group will not be the Administration's vehicle for developing a comprehensive world hunger policy, which will be coordinated by other means.

THE WHITE HOUSE  
WASHINGTON

August 30, 1977

MEMORANDUM FOR:

RICK HUTCHESON

FROM:

STU EIZENSTAT *SE*  
LYNN DAFT *LD*

SUBJECT:

Redraft of Memo on Proposed  
Interagency Working Group on  
Food and Agricultural Policy

Per your request, we have redrafted the cover memo on this topic.

Though we can understand how the generality of the proposed memorandum would have given rise to Peter Bourne's concern, we are convinced that it will not conflict with the world hunger task force being proposed. We have talked with Peter directly about it and we have made it clear that the world hunger issue is not a part of this group's agenda for policy development. I believe he is now completely satisfied on this point. In conversation with Assistant Secretary Dale Hathaway, we have been assured that the USDA does not intend to use the proposed Working Group as a means of developing a policy on world hunger. To the contrary, they are looking to the White House for guidance in how they can help us in that effort and are most anxious to do so.

Given that there is no conflict between activities of the proposed working group and the effort to define a policy on world hunger, we strongly suggest that Secretary Bergland's proposal be forwarded to the President without delay. There is a clear and pressing need for more formal coordination on this topic and the sooner it is begun the better.

Attachment

*attach to file  
but don't send  
out copies*





EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

SEP 2 1977

MEMORANDUM FOR: Rick Hutcheson  
FROM: Jim McIntyre *Jim McIntyre*  
SUBJECT: Establishment of an Interagency Working  
Group on Food and Agricultural Policy

We would like to associate ourselves with Stu Eizenstat's comments on the establishment of an Interagency Working Group on Food and Agricultural Policy.

We would be happy to participate in the work of the Group.


*Rich - We support Stu's memo.*

OFFICE OF THE SPECIAL REPRESENTATIVE  
FOR TRADE NEGOTIATIONS  
EXECUTIVE OFFICE OF THE PRESIDENT  
WASHINGTON  
20506

September 2, 1977

MEMORANDUM

TO : Mr. Bill Simon  
The White House

FROM: Richard Rivers, General Counsel 

RE : Establishment of the Interagency Working Group  
on Food and Agriculture Policy

STR supports the idea of an interagency mechanism to coordinate the formulation of U.S. agricultural policy. Such a mechanism is needed to help establish a common Administration policy and to give other agencies which have legitimate interests in U.S. agricultural policy the opportunity to aid in developing positions. However, I do have three suggestions which should be considered in the formulation of such a group:

1. The relationship of the proposed Working Group to the Trade Policy Staff Committee (TPSC), the Trade Policy Review Group (TPRG), and the Trade Policy Committee (TPC), should be clarified. All of these three groups are authorized by statute and chaired by STR. They deal with issues arising under the Trade Act of 1974, such as Section 201 escape clause cases, and with issues in the multilateral trade negotiations (MTN). For example, all position papers for Group Agriculture and the Meat, Dairy, and Grains Subgroups are cleared through the TPSC. An area such as Section 22 of the Agricultural Adjustment Act, however, would be a matter which need not fall under the TPSC and could be appropriately handled in the proposed Working Group.

In short, I am concerned that, in establishing the new Working Group, the lines of responsibility be clearly drawn. This has been done with past interagency agricultural policy working groups with no problem, and I am certain it can be worked out in this case.



2. It seems to me that an interagency mechanism designed to coordinate the views of all member agencies in the formulation of any policy is best chaired by a neutral broker. Either CEA or the Domestic Policy Staff could serve in this regard by chairing the proposed Working Group. Otherwise, there is a risk of domination if the Cabinet agency having the strongest interest in the general subject matter chairs the group.

3. The list of member agencies suggested in the August 30 memo excludes two agencies which in the past have been valuable members of agricultural policymaking groups. These are the Commerce Department, which has expertise in the agribusiness area and in pesticides, agricultural equipment, etc., and the CIA, which in the past has proven a valuable alternative source of crop forecasting data. I suggest that you consider the inclusion of these two agencies.

Thank you for requesting STR's views on the establishment of the new Working Group. I appreciate your careful consideration of our concerns.

Date: August 31, 1977

MEMORANDUM

FOR ACTION:

Jack Watson  
Bert Lance  
Charlie Schultze  
Peter Bourne  
Zbig Brzezinski Bob Strauss  
Jim Fallows

FOR INFORMATION:

The Vice President

97 AUG 31 4 44 PM '77

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: Eizenstat memo dated 8/30/77 re Establishment of an Interagency Working Group on Food and Agriculture Policy.

YOUR RESPONSE MUST BE DELIVERED  
TO THE STAFF SECRETARY BY:

TIME: 9:00 AM

DAY: Friday

DATE: September 2, 1977

ACTION REQUESTED:

☒ Your comments

Other:

STAFF RESPONSE:

☐ I concur.

☐ No comment.

Please note other comments below:

Rick:

I've not talked to Peter Bourne about this but it appears to me that there is a substantial duplication and overlap between the proposed activities of the Interagency Group on Food and Agriculture and Peter's group on World Hunger. It is not at all clear to me what the demarcation of their responsibilities is.

I fully support Stu's recommendation that the interagency group be reactivated, but think that there needs to be a much clearer delineation as to who is working on what.

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately. (Telephone, 7052)

Jack W



THE WHITE HOUSE

WASHINGTON

September 1, 1977

MEMORANDUM

TO: STAFF SECRETARY

FROM: PETER BOURNE *P.B.*

SUBJECT: EIZENSTAT MEMORANDUM DATED 8/30/77 RE: ESTABLISHMENT  
OF AN INTERAGENCY WORKING GROUP ON FOOD AND AGRI-  
CULTURE POLICY

I fully support Stu's recommended memorandum to the President establishing an Interagency Working Group on Food and Agriculture chaired by the Secretary of Agriculture.

There is, however, language in the draft memorandum to the Cabinet which I believe should be modified to avoid confusion and misunderstanding between this Working Group and the World Hunger initiative which I am working on.

First, it should be made clear in the memorandum that this is the reactivation of a previously existing Working Group and this will avoid the impression of a new initiative.

Second, to avoid any suggestion that this committee would get into the world hunger area, all references to policies affecting poor people abroad to conquer poverty and hunger should be deleted. In the same vein, references to poor nations and international aspects of poverty should also be deleted. By eliminating the international aspects, we clarify the Working Group role as primarily focusing on domestic food and agricultural policies. In this connection, I believe the Departments of Commerce, Labor and HEW should be on the Working Group. These additions will bring into the decision making process issues affecting producers, farm labor, and consumers. Finally, I would like to raise the issue of the need for CEA, OMB, NSC, etc. on the Interagency Working Group. Perhaps the Domestic Policy Staff could keep the Executive Office agencies informed of issues.

Attached is a proposed revised memorandum.

Attachment

THE WHITE HOUSE  
WASHINGTON

MEMORANDUM FOR THE HEADS OF  
EXECUTIVE DEPARTMENTS AND AGENCIES

This Administration assigns high importance to developing policies and actions in food and agriculture which serve the needs of people, especially poor people, in the United States and abroad. In the United States we must find means for encouraging family farms and efficient agricultural production to assure reasonable incomes to producers and fair prices to consumers. At home and abroad we must work to conquer poverty and hunger. We must expand foreign markets for the United States' efficient agricultural production, and we must help poor nations improve their food production and distribution.

The Secretary of Agriculture has primary responsibility in the Executive Branch for developing policies and actions in food and agriculture. In order to exercise this executive responsibility, the Secretary of Agriculture must weigh and balance interests represented in other parts of the Executive Branch. Accordingly, I am directing the Secretary of Agriculture to form a Working Group on Food and Agricultural Policy. This Working Group will be chaired by the Deputy Secretary of Agriculture and will be composed of representatives at the level of assistant secretary from these organizations:

Department of Agriculture  
Department of State  
Department of Treasury  
Agency for International Development  
Council of Economic Advisors  
Office of Management and Budget  
Special Trade Representative  
National Security Council

The Secretary of Agriculture may invite representatives of other organizations in the Executive Branch to serve in the Working Group.



In consultation with the Secretary of Agriculture and the White House Domestic Policy Staff, the Working Group will develop an agenda for policy considerations on domestic and international food and agriculture. The Secretary of Agriculture, in consultation with the Domestic Policy Staff, will inform me of policies adopted and actions taken and will refer to me policy options on issues requiring Presidential decision.

To ensure coordination, I am asking the Domestic Policy Staff to inform other organizations in the Executive Branch of policy issues to be addressed and decisions made on domestic and international food and agriculture.

The Department of Agriculture and the Domestic Policy Staff will provide staff for the Working Group on Food and Agricultural Policy.

This working group will not be the Administration's vehicle for developing a comprehensive world hunger policy, which will be coordinated by other means.

Date: August 31, 1977

MEMORANDUM

FOR ACTION:

Jack Watson  
Bert Lance  
Charlie Schultze  
Peter Bourne  
Zbig Brzezinski Bob Strauss  
Jim Fallows

FOR INFORMATION:

The Vice President

*Achsa*

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: Eizenstat memo dated 8/30/77 re Establishment of an  
Interagency Working Group on Food and Agriculture  
Policy.

YOUR RESPONSE MUST BE DELIVERED  
TO THE STAFF SECRETARY BY:

TIME: 9:00 AM

DAY: Friday

DATE: September 2, 1977

ACTION REQUESTED:

☒ Your comments

Other:

STAFF RESPONSE:

☐ I concur.

☐ No comment.

*Please note other comments below:*

I would suggest changing the order of the last 3 paragraphs  
so that the world hunger policy doesn't seem an inconsistent  
after-thought.

Achsa Nesmith

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required  
material, please telephone the Staff Secretary immediately. (Telephone, 7052)



THE WHITE HOUSE

WASHINGTON

August 30, 1977

MEMORANDUM FOR: THE PRESIDENT

FROM: STU EIZENSTAT. *Stu*  
LYNN DAFT *LD*

SUBJECT: Establishment of an Interagency Working Group on Food and Agricultural Policy

Secretary Bergland has recommended that you establish an Interagency Working Group to assist in the formulation of food and agricultural policy.

We endorse this recommendation. We think it offers a means of more systematically involving the several agencies that have a stake in the formulation of agricultural policy. Also, we think it can be done in a way that will complement the new decision process now being developed. In addition, it underscores your commitment to Cabinet government.

Peter Bourne raised a concern regarding the role of this working group vis-a-vis Peter's role in developing an Administration initiative on world hunger. We see no problem in that regard. We have talked to Peter and in accord with his concerns, we have modified the proposed memorandum from you to the relevant agencies to make it clear that this working group is not the Administration's vehicle for developing a comprehensive world hunger policy. The Interagency Working Group, as we envision its operation, would concentrate on the more routine agricultural policy issues that are continually arising ... e.g. decisions regarding loan rates, set-asides, import quotas, marketing quotas, and the like. The development of major Administration initiatives, such as the one on world hunger, would normally be handled by other means. It is possible, of course, that this group could be asked to contribute to the development of such an initiative by assessing a part of the overall issue. But we do not see it giving rise to jurisdictional squabbles.

Frank Moore approves the proposal, but suggests that his office be given an opportunity to notify key Congressmen in advance. We think that is a good suggestion.

A proposed memorandum is attached.

# THE WHITE HOUSE

WASHINGTON

## MEMORANDUM FOR THE HEADS OF

### EXECUTIVE DEPARTMENTS AND AGENCIES

This Administration assigns high importance to developing policies and actions in food and agriculture which serve the needs of people, especially poor people, in the United States and abroad. In the United States we must find means for encouraging family farms and efficient agricultural production to assure reasonable incomes to producers and fair prices to consumers. At home and abroad we must work to conquer poverty and hunger. We must expand foreign markets for the United States' efficient agricultural production, and we must help poor nations improve their food production and distribution.

The Secretary of Agriculture has primary responsibility in the Executive Branch for developing policies and actions in food and agriculture. In order to exercise this executive responsibility, the Secretary of Agriculture must weigh and balance interests represented in other parts of the Executive Branch. Accordingly, I am directing the Secretary of Agriculture to form a Working Group on Food and Agricultural Policy. This Working Group will be chaired by the Deputy Secretary of Agriculture and will be composed of representatives at the level of assistant secretary from these organizations:

- ③ Department of Agriculture
- ① Department of State
- ② Department of Treasury
- ⑤ Agency for International Development
- ⑦ Council of Economic Advisors
- ⑥ Office of Management and Budget
- ④ *Office of the* Special Trade Representative *for Trade Negotiations*
- ⑧ National Security Council

The Secretary of Agriculture may invite representatives of other organizations in the Executive Branch to serve in the Working Group.



In consultation with the Secretary of Agriculture and the White House Domestic Policy Staff, the Working Group will develop an agenda for policy considerations on domestic and international food and agriculture. The Secretary of Agriculture, in consultation with the Domestic Policy Staff, will inform me of policies adopted and actions taken and will refer to me policy options on issues requiring Presidential decision.

To ensure coordination, I am asking the Domestic Policy Staff to inform other organizations in the Executive Branch of policy issues to be addressed and decisions made on domestic and international food and agriculture.

The Department of Agriculture and the Domestic Policy Staff will provide staff for the Working Group on Food and Agricultural Policy.

This working group will not be the Administration's vehicle for developing a comprehensive world hunger policy, which will be coordinated by other means. ~~That will be announced at a later date.~~